



January 27, 2000

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2000-0300

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131768.

The City of Longview (the "city") received five requests for information from the same individual, described as follows:

1. Reports, records, and intelligence files pertaining to the identity of members and activity of the "Northside" and the "Brown and Down" Gangs within the city,
2. The offense reports numbered 94005132, 93006687, 92007953, and 98009770,
- 3a. Calls or calls for service to nine specified addresses within the past year,
- 3b. Arrest and reports involving six named individuals,
- 4a. "Call sheet - Reports of" four specified addresses within the past year,
- 4b. "Call sheets, Reports for" five named individuals,
- 5a. Call sheet for a specified address on September 24 and 25, 1999,
- 5b. The offense reports numbered 99012432, 99011017, 99011021,

99011020, 99011019, 99011144, 99009092, 9909667, 99017017, 9903058,

5c. "Call sheets, reports, any other info" regarding four named individuals,

5d. Call sheet and report for an assault incident at a specified apartment complex on November 2, 1999 at approximately 8:40 p.m.

You advise the information responsive to these requests is "voluminous," and you have provided for our review representative samples.<sup>1</sup> You assert that some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.130 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

We note at the outset that requests "3b," "4b," and "5c," essentially ask that the city compile the criminal history of the fifteen named individuals.<sup>2</sup> Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See*

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<sup>1</sup>We note you did not provide this office with samples responsive to items "3a" or "3b." In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>Because all of the samples submitted for our review consist of police department records, and because the requestor asks for "arrest" information, the requests appear to have been made of the city's police department.

Open Records Decision Nos. 616 (1993), 565 (1990). Two of the fifteen named individuals are indicated to be deceased. Common law privacy rights lapse upon the death of the subject. Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). We thus find requests “3a,” “4b,” and “5c” implicate the privacy interests of those named individuals who are not deceased, but only to the extent that the information responsive to these requests consists of a compilation of the named individual’s criminal history and only to the extent that the individual is a possible suspect. *See, e.g.*, Open Records Decision Nos. 628 at 4-5 (1994) (finding the names of victims of crime to generally not implicate the victim’s privacy interests, and describing the types of crime victim information protected by common law privacy), 616 at 2 (1993) (distinguishing a “mug shot” as not protected by privacy interests, in part, because it is not contained in a compilation of the individual’s criminal history). Some of the sample information submitted for our review as responsive to other requests constitutes a criminal history compilation of a named individual. This information, which we have marked, must be withheld as it implicates the named individual’s right to privacy.<sup>3</sup>

Some of the samples responsive to request “1,” which you refer to as “rap sheets,” appear to be police department investigative records.<sup>4</sup> You aver these documents should be withheld in their entirety because they constitute criminal history compilations of the subject individuals. While we agree the documents comprise compilations of information about the subject individuals, much of the information is not criminal history information. Moreover, the information that is not criminal history information is not intimate or embarrassing. We therefore do not agree that all of the information on these documents implicates the privacy interests of the subject individuals. We have, however, marked for redaction that information that reveals any criminal history of the named individual, as discussed above, or that is made confidential by statute, as discussed below.<sup>5</sup> As noted above, you have also submitted for our review a “rap sheet” as responsive to request “4b,” which we determine must be withheld in its entirety.

In relevant part, section 58.007(c) of the Family Code states:

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<sup>3</sup>One named individual, Patrick Sneed, is deceased. Therefore, we find no privacy interest exists in offense reports showing he was a suspect.

<sup>4</sup>Records that contain information regarding previous arrests, including the offenses, times of arrest, booking numbers, locations, and arresting officer are generally referred to as “rap sheets.” Because such records can contain “inaccurate or misleading entries” and because many individuals arrested for crimes are wholly innocent, disclosure of such information would constitute an unwarranted invasion of the arrestee’s privacy interests. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, at 179 (Tex. Civ. App. -- Houston [14<sup>th</sup> Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 616 at 2 (1993).

<sup>5</sup>The subject individual of one of these “rap sheets” is deceased. Thus, no privacy interest remains in this individual’s criminal history. However, the document also includes information compiled about the individual in the context of investigating him as a juvenile suspect of crime. This information, which we have marked, is made confidential by statute (see the discussion below of section 58.007 of the Family Code).

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

This provision only applies to juvenile law enforcement records concerning conduct that occurred on or after September 1, 1997, where the record relates to the individual as an offender or a suspect of crime.<sup>6</sup> None of the exceptions to this confidentiality provision appear to apply. *See* Fam. Code § 58.007(d). The samples responsive to item "1" include offense reports which indicate the involvement of at least one suspect who was a juvenile at the time of the incident. The offense reports also indicate the alleged conduct occurred after September 1, 1997. You must therefore withhold these reports in their entirety pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. Some of the police department investigative records, which you refer to as "rap sheets," include information in which the subject is indicated to have been a juvenile at the time the information was compiled. Where the specific information reveals the juvenile to be a suspect of crime, we believe such information is implicated under section 58.007(c) of the Family Code. We have accordingly marked this information for redaction, which we determine the city must not release in accordance with this provision.

In relevant part, section 261.201(a) of the Family Code provides that:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>6</sup>Juvenile law enforcement records concerning conduct that occurred from January 1, 1996 to August 31, 1997 are not made confidential by former section 58.007 of the Family Code. *See* Open Records Decision No. 644 (1996). Juvenile law enforcement records concerning conduct that occurred before January 1, 1996 are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose. Act of June 2, 1997, H.B. 1550, 75<sup>th</sup> Leg., R.S., ch. 1086, § 53, 1997 Tex. Gen. Laws 4179, 4199. However, we find no information in the submitted samples that implicates former section 51.14(d) of the Family Code.

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Some of the sample information responsive to request “1” relates to an investigation of the alleged sexual assault of a juvenile. We believe that subsection (a) is applicable to this information because it consists of “files, reports, records, communications, audiotapes, videotapes, [or] working papers used or developed” in an investigation conducted under chapter 261 of the Family Code. Fam. Code § 261.001(1). You have not informed this office of any rules the city has adopted that would permit access to this information. Thus, you must withhold this information, which we have marked, under section 552.101 in conjunction with section 261.201 of the Family Code.

You have marked for redaction the names of certain individuals in which the individual “reported [to the police] the identity of persons believed to be gang members.” You assert these names are excepted from disclosure under section 552.108 of the Government Code. You represent to this office that release of these names would create “a high likelihood of retaliation by the gangs.” Section 552.108, in part, excepts from disclosure information if its release “will unduly interfere with law enforcement or crime prevention.” *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986). This office has determined that where a governmental body represents to this office that the release of the name of an individual who reported gang-related activity may result in retaliation, the name may be withheld pursuant to section 552.108. Open Records Decision No. 628 at 3 (1994). We therefore agree, pursuant to section 552.108, that you may redact these names from the documents prior to their release.

The submitted sample information includes driver’s license numbers, license plate numbers, and vehicle identification numbers. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state[.]

We note one of the samples responsive to request "2" includes such information of a deceased individual. We believe section 552.130 is intended to protect the privacy of the subject of the information. We therefore determine the information described by section 552.130(a) that relates to the deceased individual is not excepted from disclosure. We have marked the information you must withhold pursuant to this provision.

The responsive information includes social security numbers. Social security numbers are confidential if they were obtained or are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). You state that because "it is not clear to [you] which provision of law authorizes a police department to obtain a suspect's social security number, [you are] unable to ascertain whether the social security numbers" are excepted from disclosure. By this representation, we assume the social security numbers were obtained by the city police department pursuant to an internal policy which requests the social security number as a means to identify individuals. The police department's internal policy is not a provision of law. Absent a provision of law enacted on or after October 1, 1990 that requires the city to obtain or maintain the social security numbers, you must release the social security numbers.<sup>7</sup>

Although you asserted sections 552.103 and 552.107 of the Government Code in your initial correspondence to this office, you made no arguments as to the applicability of these exceptions. You additionally did not mark any of the submitted sample information as being excepted from disclosure by these provisions. *See* Gov't Code § 552.301(e)(2). Both section 552.103 and section 552.107 are permissive exceptions. *See, e.g.*, Open Records Decision Nos. 630 (1994) (section 552.107 is a discretionary exception), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation, and does not itself make information confidential). You have therefore waived these exceptions. Except as otherwise noted herein, the information responsive to the requests must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>7</sup>In the event the social security numbers are made confidential because they were obtained or maintained by the city pursuant to a provision of law enacted on or after October 1, 1990, we note that 42 U.S.C. § 405(c)(2)(C)(vii) is intended to protect the privacy of the subject, and that this provision would not therefore make confidential the social security numbers of those individuals who are deceased.

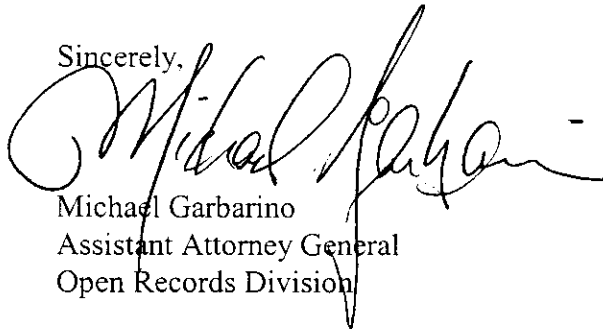
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/jc

Ref: ID# 131768

Encl. Submitted documents

cc: Mr. Doug Smith  
428 North Fredenia Street  
Longview, Texas 75601  
(w/o enclosures)